

JS 44 (Rev. 10/20)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS****ACQUIANA FERGUSON**(b) County of Residence of First Listed Plaintiff **YORK**  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

**JOSEPH C. KORSACK, ESQ.; 34 N.QUEEN ST, YORK,  
PA 17403****DEFENDANTS****DAWN FOOD PRODUCTS, INC.**County of Residence of First Listed Defendant **YORK**  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                            |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander			<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 850 Securities/Commodities/Exchange
				<input type="checkbox"/> 890 Other Statutory Actions
				<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

TITLE VII

Brief description of cause:  
DISCRIMINATION IN EMPLOYMENT**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$  
\$300,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/18/2021

SIGNATURE OF ATTORNEY OF RECORD

Joseph C. Korsack

Digitally signed by Joseph C. Korsack  
Date: 2021.02.18 13:08:43 -0500**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AQUIANA C. FERGUSON  
PLAINTIFF,

Civil Action No.

v.

JUDGE

DAWN FOOD PRODUCTS, INC.  
DEFENDANT.

JURY TRIAL DEMANDED

**NOTICE OF LAWSUIT AND REQUEST  
FOR WAIVER OF SERVICE OF SUMMONS**

TO: DEFENDANT

A lawsuit has been commenced against you. A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Middle District and has been assigned docket number for this case is

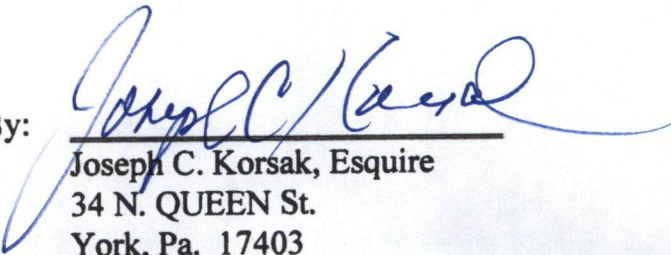
This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within thirty (30) days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from the date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the Plaintiff this 18th day of February, 2021.

By:

A handwritten signature in blue ink, appearing to read "Joseph C. Korsak", is written over a horizontal line.

Joseph C. Korsak, Esquire  
34 N. QUEEN St.  
York, Pa. 17403  
717-880-3759  
PA # 22233



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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AQUIANA C. FERGUSON  
PLAINTIFF,

Civil Action No.

v.

JUDGE

DAWN FOOD PRODUCTS, INC.  
DEFENDANT.

JURY TRIAL DEMANDED

**WAIVER OF SERVICE OF SUMMONS**

TO: Joseph C. Korsak, Esquire  
Attorney for Plaintiff  
34 N. Queen St.  
York, Pa 17403

I acknowledge receipt of your request that I waive service of a summons in the above action, which is case number in the United States District Court for the Middle District. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I be served with judicial process in the manner provided by Rule 4.

I will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me if an answer or motion under Rule 12 is not served upon you within sixty (60) days after

\_\_\_\_\_ or within ninety (90) days after that date if the request was sent outside the United States.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
DAWN FOOD PRODUCTS, INC.

**Duty to Avoid Unnecessary Costs of Service of Summons**

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A Defendant located in the United States who, after being notified of an action and asked by a Plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A Defendant who waives service must within the time specified on the waiver form serve on the Plaintiff's attorney a response to the Complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that Defendant. By waiving service, a Defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AQUIANA C. FERGUSON  
PLAINTIFF,

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JUDGE

DAWN FOOD PRODUCTS, INC.  
DEFENDANT.

JURY TRIAL DEMANDED

**COMPLAINT**

**I. Introduction**

Plaintiff, ("Plaintiff"), brings this action under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, the Americans with Disabilities Act, and the Pennsylvania Human Relations Act, 43 P.S. § 951. Plaintiff seeks injunctive and declaratory relief, back pay, rehire, or alternatively front pay, compensatory and punitive damages and costs and attorney's fees from Defendant ("Defendant") to compensate her for Defendant's unlawful failure to accommodate her reasonable requests due to her disability.

**II. Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin), 28 U.S.C. §§ 2201, 2202, 1331(a), 1343 and 42 U.S.C. § 2000e-5(f). The above described remedies are sought pursuant to 42 U.S.C. §§ 2000e-5, 1981a, and 1988, and 28 U.S.C. §§ 2201, 2202, 1331(a) and 1343. Also, under the Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117. Also, under Retaliation 42 U.S.C. § 12203(a) 29 C.F.R.



Part 1640, 42 U.S.C. § 1988 - Proceedings in vindication of civil rights, 42 U.S.C. § 12112- Discrimination, 42 U.S.C. § 1981 - Equal rights under the law, Sec. 1977A Damages in Cases of Intentional Discrimination in Employment [42 U.S.C. § 1981a], and the Civil Rights Act of 1991.

2. Plaintiff has complied with all jurisdictional prerequisites, including those set forth in 42 U.S.C. § 2000e-5 and the Pennsylvania Human Relations Act.

3. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. The Defendant maintains its principal office for the administration of all business at 3701 Concord Rd., York, Pa. 17402. Furthermore, alleged unlawful acts and practices of the Defendant were committed within or upon the direction of Defendant's agents within York County, in the Commonwealth of Pennsylvania.

### **III. Parties**

5. Plaintiff is a female citizen of the Commonwealth of Pennsylvania who resides at 419 S. Pine St., 1st floor, York, PA 17403.

6. Defendant is believed to be a Pennsylvania corporation with one of its principal offices in York, Pennsylvania, and with facilities located throughout the Commonwealth of Pennsylvania.

7. Defendant is engaged in the business of baking products for the bakery industry. Defendant employs in excess of 500 employees.

8. Defendant is an "employer" within the meaning of 42 U.S.C. § 2000e(b), within the meaning of the Pennsylvania Human Relations Act, and the Americans with Disabilities Act.

### **IV. Factual Background**

9. Defendant hired Plaintiff on January 3, 2012, as a finisher.

10. Defendant was discriminated against from the start of her employ.

11. Plaintiff observed that other white employees were rotated through various



positions, where Plaintiff was not.

12. Plaintiff requested that she receive training to do other jobs but was continually denied. Plaintiff was only allowed to dump cakes out of pans and to pack them.

13. White workers were given training.

14. Up until Plaintiff was constructively discharged, she simply performed the same work that she started with years earlier.

15. One of the supervisors, Missy Horner, would repeatedly follow me to the restroom, something not done to other employees.

16. On May 19, 2016, Plaintiff made a race based and harassment based complaint to the company human resources representatives. The company did not do anything with the complaint.

17. Nothing was done by management to address the issues raised. Human Relations shut her out.

18. Around January, 2016, Plaintiff revealed that she has a disability, to wit, Hidradenitis Suppurativa.

19. Around August 2017, because of increased stress on the job which worsened her condition, Plaintiff requested intermittent leave as a reasonable accommodation.

20. In August, 2017, Plaintiff was reprimanded for using her FMLA leave.

21. Around October 2017, Plaintiff was disciplined for wearing her uniform while on lunch break.

22. Around November 2017, Plaintiff was disciplined for allegedly taking too much time off for her medical problems.

23. My last day of work was November 7, 2017, when I resigned because of the intolerable work conditions.

24. For the five years Plaintiff was employed, Supervisor Horner referred to me as Olympia. There was another employee so named, but Horner insisted on calling her Acquiana. Supervisor Horner appeared to think that all people of color look alike.

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## **V. Claims**

### **First Count RACE**

23. Paragraphs 1 through 22 are incorporated by reference herein.

24. The acts, failures to act, practices and policies of Defendant set forth above, to wit, failure to train, failure to advance, failure to rotate, and unequal discipline and treatment, constitute intentional discrimination on the basis of Plaintiff's race in violation of Section 703 of Title VII, 42 U.S.C. § 2000e-2.

### **Second Count DISABILITY**

25. Paragraphs 1 through 24 are incorporated by reference herein.

26. The acts, failures to act, practices and policies of Defendant set forth above constitute retaliation against Plaintiff because of her disability.

### **Third Count RACE AND DISABILITY**

27. Paragraphs 1 through 26 are incorporated by reference herein.

28. The acts, failures to act, practices and policies of Defendant set forth above violate the Pennsylvania Human Relations Act. 43 P.S. § 955.

### **Fourth Count CONSTRUCTIVE DISCHARGE**

29. Paragraphs 1 through 28 above are incorporated by reference.

30. The Defendant and its agents created a work atmosphere which would be intolerable to a person of ordinary and reasonable sensibilities.

31. The Defendant constructively discharged Plaintiff.

## **VI. Relief**

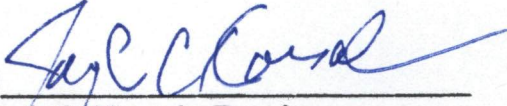
32. For each of the above claims, Plaintiff respectfully requests that this Court grant judgment in her favor against Defendant and award her relief including but not limited to the following:



- A. Injunctive relief directing Defendant to rehire Plaintiff immediately, with full pay, status and privileges accompanying the position;
- B. Back pay and all other benefits, perquisites and other compensation for employment which Plaintiff would have received had she remained an employee;
- C. Front pay in the event that it is determined that rehire is impossible or inappropriate;
- D. Compensatory damages including reimbursement of all expenses and financial losses Plaintiff incurred as a result of Defendant's actions and compensation for emotional pain and suffering;
- E. Punitive damages in the amount of \$300,000;
- F. Declaratory relief declaring the acts and practices of Defendant to be in violation of the statute cited above;
- G. Reasonable attorney's fees plus costs;
- H. Such other relief as this Court shall deem appropriate.

Respectfully submitted,

Date: 2/18/21

By:   
\_\_\_\_\_  
Joseph C. Korsak, Esquire  
34 N. Queen Street  
York, Pa 17403  
I.D. No. 22233